IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7248 OF 2005

Aalim @ Dhaphalya Harun Kemkar Applicant

versus

The State of Maharashtra Respondent

V.V.Purwant for applicant.

Mrs.S.D.Shinde, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th November 2005

PC :

1. The original accused no.3 has preferred this application for regular bail.

2. Shri Purwant - learned advocate appearing for the applicant contends that as far as present applicant is concerned, statements does not attribute any specific act of assault on his part. The statements clearly indicate that the applicant was present when the other accused were assaulting the deceased with wooden sticks and other weapons. There have been no incriminating articles recovered at the instance of the

applicant.

3. The matter was adjourned till today because Shri Purwant had contended on the last occasion that although the complaint alleges that the applicant was possessing a wooden stick, in the supplementary statements, it is clearly stated that the applicant was present but was not holding any stick or other weapon.

4. On this submission being made, the learned APP sought time to take instructions. Today, a copy of the supplementary statement recorded on 5th June 2005 is made available. The statement is of one Mallikarjun Krishna Shinde apart from the husband of the deceased stating that the accused Ajim Shekh Manjoor Shekh had assaulted the deceased with sticks which he was carrying with him.

5. Although, the charge is serious, it appears from the statements of the complainant as well as the witnesses referred to above, that the applicant was not carrying any weapon muchless a wooden stick. In these circumstances, the act of assault cannot be attributed to the present applicant - accused no.3. There is much

substance in the contention of Shri Purwant that the statements have been misread and the learned Sessions Judge, therefore, fell in error in rejecting the application of the applicant.

6. It is also contended by Shri Purwant that the applicant is a resident of Barshi. The applicant has no criminal antecedents. The applicant would co-operate in the early disposal of the case and would also abide by such conditions as are imposed by this Court.

7. In these circumstances, in my view, the applicant is entitled to be enlarged on bail. The applicant, therefore, shall be enlarged on bail in connection with offence registered by CR No.104/2005 by Barshi City Police Station. Moreso, since the applicant has been retained in custody from 8th June 2005.

8. Accordingly, following order :-

(i) The applicant shall be enlarged on bail in connection with C.R.No.104/2005 registered with Barshi City Police Station, subject to furnishing a personal bond of Rs.5,000/- (Rs.Five thousand only) with a solvent local surety in the like

sum, till the trial is concluded;

(ii) The applicant shall visit Barshi City Police Station once a week on every Tuesday between 11.00 a.m. to 2.00 p.m.;

(iii) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iv) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(v) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vi) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)